

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

9 CHEYONNA LEWIS,

10 Plaintiff,

11 v.

12 NANCY A. BERRYHILL, Acting
13 Commissioner of the Social Security
Administration,

14 Defendant.
15

CASE NO. 3:18-CV-5353

ORDER TO SHOW CAUSE

16 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local
17 Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge
18 and Consent Form, Dkt. 5; Consent to Proceed Before a United States Magistrate Judge, Dkt. 9).

19 This case is before the Court on plaintiff's failure to respond to the Court's Scheduling
20 Order (Dkt. 12), dated and mailed to plaintiff on July 17, 2018. This Order directed plaintiff to
21 file an opening brief on or before August 14, 2018. Plaintiff has neither filed an opening brief
22 nor asked the Court for more time to do so.

23 Plaintiff, Cheyonna Lewis, proceeding *pro se*, filed her complaint in May, 2018 (Dkt. 7).
24 Because plaintiff is proceeding *pro se* and was granted *in forma pauperis* status (Dkt. 6), the

1 Court directed service of the summons and complaint (Dkt. 8). The Acting Commissioner filed
2 the Answer/Administrative Record on July 16, 2018 (Dkt. 17). The Scheduling Order was filed
3 and mailed to plaintiff on July 17, 2018 (Dkt. 12).

4 The Scheduling Order provides in pertinent part:

5 **(1) Plaintiff's Opening Brief**

6 (a) Beginning on page one, plaintiff shall list the errors alleged (for
7 example, "Issue No. 1 – The ALJ failed to properly evaluate plaintiff's
8 subjective complaints of pain."), followed by a clear statement of the relief
9 requested. A general statement of an issue, such as "the ALJ's decision to deny
10 benefits is not supported by substantial evidence," is unacceptable. Assignments
11 of error that are not listed in this section of the opening brief will not be
12 considered or ruled upon.

13 (b) Plaintiff shall provide a brief summary of the relevant procedural
14 history of the case. Plaintiff shall not include a lengthy recitation of background
15 facts or medical evidence in this section. Discussion of the relevant facts must
16 be presented in the argument section in the context of the specific errors alleged.

17 (c) Subsequent sections of the opening brief must fully explain each
18 issue raised in the assignments of error and must include citations to the specific
19 pages of the administrative record and the relevant legal authority that support
20 each argument and request for relief.

21 Plaintiff appealed the denial of her Social Security applications by filing this lawsuit and
22 thus has the responsibility to explain to the Court (1) what the ALJ did wrong, (2) what evidence
23 supports his position, and (3) why the ALJ's error was harmful, *i.e.*, why it affected the outcome
24 of the case. This responsibility is met by filing an opening brief. The opening brief is important
because it informs everyone of the specific claims plaintiff wishes the Court to address, and
gives the Acting Commissioner an opportunity to respond. Without an opening brief, the Court
would have to guess at what claims plaintiff intends to present. Additionally, the Court cannot
act as the lawyer for either side, that is, the Court cannot make arguments on behalf of a party
and cannot decide the case based on issues that the parties have not raised.

1 Only after plaintiff and the Commissioner file their briefs, will the Court be in a position
2 to review the arguments made by both sides and issue a decision. In this case, plaintiff's failure
3 to file an opening brief not only deprives the Court of knowing what claims she wishes the Court
4 to review, it also violates the Court's Scheduling Order. If the Court finds that plaintiff failed to
5 file her brief without just cause, the Court could dismiss the case. Local Civil Rule 11(c); *see*,
6 *also* Fed. R. Civ. P. 41(b). Given the circumstances in this case, however, the Court would
7 prefer to decide the case on the merits and does not deem the drastic measure of dismissal
8 appropriate at this time.

9 The Court therefore ORDERS:

10 (1) Cheyonna Lewis, plaintiff, must submit to the Court by **October 9, 2018** an
11 opening brief explaining what the ALJ did wrong, with citations to the Administrative Record,
12 what evidence supports plaintiff's position, and why the ALJ's error was harmful, and also must
13 follow the requirements noted in the Scheduling Order (*see* Dkt. 12).

14 (2) If plaintiff does not file or cannot file an opening brief, she must explain why the
15 case should not be dismissed for failing to follow the Court's scheduling order. She must submit
16 this explanation to the Court no later than **October 9, 2018**.

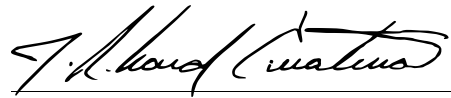
17 (3) If plaintiff files an opening brief or explains why she failed to follow the
18 scheduling order, the Acting Commissioner shall file a response by **November 5, 2018**.

19 (4) If plaintiff does not file an opening brief or does not explain why she failed to
20 follow the scheduling order, the case shall be dismissed.

21 (5) The Clerk is directed to mail a copy of this Order to plaintiff at the last known
22 address.

1 The Court directs plaintiff to the Court's website, which includes information for *pro se*
2 litigants, such as the *Pro Se* Guide, which includes resources for potentially finding legal advice:
3 <http://www.wawd.uscourts.gov/representing-yourself-pro-se> (last visited September 7, 2018). *See*
4 also "*Where Can You Get Legal Advice?*" located at *Pro Se* Guide, p. 38,
5 [http://www.wawd.uscourts.gov/sites/wawd/files/ProSeGuidetoFilingYourLawsuitinFederalCourt](http://www.wawd.uscourts.gov/sites/wawd/files/ProSeGuidetoFilingYourLawsuitinFederalCourt.pdf)
6 .pdf (last visited September 7, 2018).

7 Dated this 11th day of September, 2018.

8 
9

10 J. Richard Creatura
United States Magistrate Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24